IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5013 OF 2005

Rakesh Chandra Shukla ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Subhash Jha with Shri. Jimesh Shah i/by Law Global for the Applicant.
Shri. A.S. Gadkari, A.P.P. for the State.
Shri. J. C. Satpute for the Respondent No.2.

CORAM : A.S.OKA, J.
DATED : SEPTEMBER 20, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant, the learned A.P.P. for the State and Shri. Satpute for the Respondent No.2. This is an Application for Anticipatory Bail in connection with offence registered at Sahar Police Station for offence punishable under sections 419, 420 read with section 120-B and section 34 of the Indian Penal Code.

2. The case of the Applicant is that he works with M/s. Worldwide Business Centre Private Ltd., a Company engaged in manpower consultancy services. The Case of the Applicant is that during the course of the business of the said Company, ninteen passports with tickets and VISA were received by the said Company for the purpose of making endorsement of ECNR i.e. "Emigration Check Not Required". Case of the Applicant is that the necessary documents were forwarded to the Protector of Emigrants at Santacruz, Mumbai and endrosement was issued by the said office.

3. It appears that said ninteen persons were not allowed to travel abroad by the Police. In so far as the present Applicant is concerned, the allegation of the prosecution seems to be that emigration clearance has been obtained by the Applicant by forging the signatures of the said ninteen persons holding the passport and the endorsements have been obtained on the passports.

4. The Application for Anticipatory Bail filed by the Applicant and co-accused came to be rejected by a common order passed by the learned Additional Sessions Judge, Mumbai. While rejecting the Application, the learned Judge directed that the investigation be transferred to another Investigating Officer.

5. The learned Counsel appearing for the Applicant submitted that the earlier Investigating Officer made a demand of bribe from the Applicant and an audio cassette recording the conversation between the Applicant and the earlier Investigating Officer is tendered in the Sessions Court. He placed reliance on communication dated 04th July, 2005 issued by the protector of Emigrants-II, Mumbai addressed to the Police Authorities. He submitted that the said letter records that by earlier letter dated 16th May, 2005, the concerned Investigating Officer was informed that

the clearance granted by his Office was genuine. The said letter records an objection to the action of preventing the persons from travelling abroad as there was no reasonable ground to prevent departure of the said persons. He submitted that inspite of the letter dated 16th May, 2005 issued by the protector of the Emigrants, the Investigating Officer proceeded with the investigation against the Applicant and insisted for arrest of the Applicant. He submitted that undue harrasment will be caused to the Applicant if he is arrested.

6. As reliance was placed on the letter dated 04th July, 2005, the protector of Emigrants was directed to be made a party to this Application. An affidavit has been filed today by the protector of Emigrants. He has set out in the affidavit that prior to granting clearance, documents were checked. He stated that the recruiting agent M/s.Worldwide Business Centre Pvt. Ltd. is duly authorised to submit passports of the individuals on their behalf for the grant of emigration suspension and the Applications for emigration suspension are always considered on the basis of requisite documents. In the affidavit he has referred to letter dated 16th May, 2005. He also reiterated that the said letter alongwith letter dated 04th July, 2005 (Exhibit C to the Application) were forwarded to the Mumbai Police.

The learned Counsel appearing for the Respondent No.2 has placed on record a copy of letter dated 16th May, 2005 sent by the protector of Emigrants, Bombay to the Investigating Officer. It is stated that in the said letter that the passports in question were submitted by registered Recruiting Agent M/s. Worldwide Business Centre Private Ltd. whose Director is Ms. Pravin Anjum.

7. The learned A.P.P. submitted that the order passed by the Sessions Judge has been acted upon and the Investigating Officer has been changed. While opposing the Application, he submitted that in case this Court is inclined to grant relief, order directing giving of seventy two hours notice be passed in the event the Respondent No.1 State desires to arrest the Applicant.

8. I have considered the statements. Perusal of the F.I.R and remand report which are on record shows that only allegation made against the Applicant is that he was working with M/s. Worldwide Business Centre Pvt. Ltd.,and that the said company has obtained endorsements on the passport from the protector of Emigrants on the basis of forged documents. The stand taken by the protector of Emigrants in the letters dated 16th May, 2005 and 04th July, 2005 has been reiterated in the affidavit filed

in this Court. It is stated that only after necessary documents were exmained, clearance was granted. It is also stated that M/s. Worldwide Business Centre Pvt. Ltd., which is recruiting agency is holding valid registration certificate and is authorised to submit passports of the individuals in their behalf for grant of Emigration Suspension.

8. In view of the categorical stand taken by the Respondent No.2 i.e. protector of Emigrants, it is obvious that undue harrasment will be caused to the Applicant if he has subjected to arrest. A case is made for granting Anticipatory Bail in favour of the Applicant.

9. The learned Counsel appearing for the Applicant submitted that the earlier Investigating Officer has played fraud upon the court. As far as this submission is concerned, it is open for the Applicant to take out appropriate proceedings against the person concerned.

10. Hence, I pass the following order:

: O R D E R :

i) In the event of the arrest of the Applicant in connection with C.R. NO. 178 of 2005 registered with

Sahar Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R. Bond in the sum of Rs.5,000/- with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that till the filing of the chargesheet the Applicant will attend the office of the Investigating Officer as and when called upon and co-operate for investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till the chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in the above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE